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David E. Patton
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U.S. DISTRICT COURT E.D.N.Y.
★ JUL 24 2012 ★

Eastern District
Peter Kirchheimer
Attorney-in-Charge

BROOKLYN OFFICE

July 1, 2012

By Email

Nathan Reilly
Marisa Megur Seifan
Assistant U.S. Attorneys
271 Cadman Plaza East
Brooklyn, NY 11201

Re: **United States v. Lawrence Dicristina, 11-CR-414 (JBW)**

Dear Mr. Reilly:

This is to confirm my notification to you this morning, via email, that the defense intends to call Randal D. Heeb, Ph.D, as an expert witness at the trial scheduled in the above-reference matter. Dr. Heeb will provide testimony for the defense regarding the impact of skill on the game of poker, in support of our position, discussed as well in our pending Rule 12(b) motion to dismiss, that poker is not gambling and is a game of skill as opposed to a game of chance. Dr. Heeb's testimony will be based on his training and expertise in economics, his research and analysis of game theory and poker, and his expertise as a successful non-professional poker player for over 25 years. A summary of his qualifications, which were provided in the prior email, is attached.

Sincerely yours,



Kannan Sundaram
Assistant Federal Defender
(718) 330-1203

cc: Hon. Jack B. Weinstein (by hand delivery)

*Notify by
telephone. The
Court will hear
the expert*

*at a
Daubert
and
relevancy
hearing on*

*July 6 at
1000 AM.
Inclosed
JL 7/3/12
9:15 AM*





Randal D. Heeb, PhD

Partner

Summary of experience

Randal Heeb has 25 years of experience providing economic analysis in both the private and public sectors. His expertise includes antitrust analysis of tying and bundling, exclusive dealing, and analysis of intellectual property issues. Dr. Heeb has written and consulted on a range of issues related to anticompetitive behavior in innovation-intensive industries. He has extensive experience in the software and computer hardware industries, as well as the electric power and natural gas industries. Dr. Heeb has previously held various academic posts in the United States and Europe, and was most recently a Senior Faculty Fellow at the Yale School of Management. He has served private sector clients and public authorities operating in both regulated and unregulated markets throughout the world, and has taught antitrust compliance to executives in North America, Europe and Asia.

Areas of expertise

- Antitrust and competition policy
- Intellectual property damages
- Bundling and tying
- Antitrust damages analysis
- Asset valuation
- Econometric modeling

Selected experience

- Submitted expert testimony regarding liability on behalf of Coral Energy Resources, an energy trading company in a NYMEX commodity futures market manipulation case, *In Re Natural Gas Litigation*.
- Submitted expert testimony on damages on behalf of the defendant in a dispute over alleged natural gas price and financial derivatives price manipulation in *Gallo v. EnCana*.
- Submitted an expert report on damages in *MCQ v. Idaho Pizza Company*, a dispute involving intellectual property licensing in the franchise restaurant business.

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Bates White, LLC

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- Served as the lead economics consulting expert on behalf of AMD supervising all economics contributions to the landmark microprocessor antitrust case *AMD v. Intel*, and led the consulting teams supporting three testifying experts. Advised on overall case strategy and performed economic analysis to assess liability and damages resulting from alleged illegal conduct in the United States, Japan, Korea, and Europe.
- Provided economic analysis to the Competition Bureau of Canada in its evaluation of the acquisition of Maple Leaf Sports Entertainment by Bell Canada Enterprises (BCE) Inc. and Rogers Communications, Inc.
- Led the economic team supporting an international competition authority in its evaluation of a proposed merger of equities exchanges.
- Led a joint U.S. and European consulting team providing support to a leading firm in the transportation industry to address inquiries from antitrust authorities in a number of jurisdictions throughout the world, including the European Commission and the U.S. Department of Justice, related to allegations of price fixing and other anticompetitive conduct.
- Developed damages estimates for mediation in an antitrust and intellectual property dispute in the heavy equipment industry involving issues of bundled pricing and exclusive dealing.
- Served as lead consulting expert for SAP defending a patent infringement suit in *Sky Technologies LLC v. SAP AG and SAP America Inc.*
- Retained to submit an expert report on damages for a defendant computer manufacturer in an intellectual property dispute.
- Served as lead consulting expert for Amgen, Inc. in a patent infringement suit in *Teva v. Amgen*. Amgen obtained a favorable settlement blocking the introduction of the infringing drug in the United States until one month before the patents at issue will expire.
- Estimated damages related to allegations of natural gas price manipulation, and provided advice as a consulting expert in support of successful settlement discussions.
- Served as Scientist-in-Charge (principal investigator) of European Union-funded research study of the economics of network industries.
- Developed electric utility resource planning and asset valuation methodology and software implemented in six states and used by federal government researchers.
- Developed a simulation model to calibrate electricity forecasting and planning methodologies to variations in weather.

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Professional experience

Prior to joining Bates White, Dr. Heeb was Assistant Professor of Economics at the INSEAD business school in Fontainebleau, France, where he taught Economics, Negotiation and Mediation, and Business Strategy. Previous academic postings include Lecturer at the University of Chicago Department of Economics, Visiting Assistant Professor of Economics and Strategy at the University of Chicago's Graduate School of Business, and Visiting Professor at The European School of Management and Technology. In 2011, he was a Senior Faculty Fellow at Yale School of Management. In addition to his professorships, Dr. Heeb previously served as President of Policy Planning Associates, Inc., a software development firm specializing in customized energy industry applications.

Education

- PhD, Economics, University of Chicago
- MPA, John F. Kennedy School of Government, Harvard University
- BA, Economics, University of Washington

Publications and working papers

- Heeb, Randal, Leslie M. Marx, William E. Kovacic, and Robert C. Marshall. "Cartels as Two-Stage Mechanisms: Implications for the Analysis of Dominant-Firm Conduct," *Chicago Journal of International Law* 10, no. 1 (2009).
- Heeb, Randal. "Innovation and Vertical Integration in Complementary Markets," *Journal of Economics and Management Strategy* 12, no. 3, (2003).
- Heeb, Randal, Alexander Cavallo, and Hazem El-Abbadi. "The Hidden Gender Restriction: The Need for Proper Gender Controls When Testing for Racial Discrimination." In *Intelligence, Genes, & Success*, edited by Devlin et. al., 193–214. New York: Springer-Verlag, 1997.
- Heeb, Randal and Rebecca Kilburn. "Effects of State Regulation on Childcare Prices and Choices." RAND working paper, 2004.
- Heeb, Randal. "Catching up in Quality." INSEAD working paper, 2002.
- Heeb, Randal. "Optimal Differentiation." INSEAD working paper, 2002.

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Speaking engagements

- American Conference Institute, "Paragraph IV Disputes: Expert Insights on Hatch-Waxman Litigation Strategies for Brand Names and Generics," May 2011, New York, NY.
- New York State Bar Association, Antitrust Section, "Counseling clients on exclusionary conduct," March 2011, New York, NY.
- Stanford Institute for Economic Policy Research, "Antitrust and IP Forum," April 2010, Palo Alto, California.
- European School of Management and Technology, "Cartel Enforcement for Energy Industry Executives," November 2008, Berlin, Germany.
- Econometrics Society Summer Meeting. "Optimal Differentiation." June 2002. Los Angeles, California.
- Ecole Nationale des Ponts et Chatussees. "Antitrust Issues: The Microsoft Case." April 2002. Paris, France.
- TMR Network Industries Conference. "Optimal Differentiation." October 2001. Lisbon, Portugal.
- Risk Assessment Conference, INSEAD. "Nash Bargaining Oligopoly Equilibria." April 2001. Singapore.
- Faculty of Economics, Universidade Nova de Lisboa. "Catching up in Quality." March 2001. Lisbon, Portugal.
- Berlin Social Science Research Center (WBZ). "Vertical (Dis)-integration in Complementary Markets." October 2000. Berlin, Germany.
- TMR Network Industries Conference. "Vertical (Dis)-integration in Complementary Markets." October 2000. Heidelberg, Germany.
- Society for Economics Design, "Vertical (Dis)-integration in Complementary Markets." June 2000. Istanbul, Turkey.

Scholarly journal referee

- *American Journal of Sociology, European Economics Review, International Journal of Industrial Organization, Journal of Industrial Economics, Journal of Policy Analysis and Management, Journal of Political Economy, Journal of the European Economics Association, RAND Journal of Economics*

DRAFT Report of Randal D. Heeb

I. Introduction

I.A. Qualifications and experience

- (1) I am a Partner in the economic consulting firm of Bates White, LLC, where I am a co-leader of the firm's Intellectual Property and Antitrust business practices. I have a Bachelor of Arts degree in Economics from the University of Washington, a Master in Public Administration degree from the Harvard Kennedy School, and a PhD in Economics from the University of Chicago. I have held various academic posts, most recently as a Senior Faculty Fellow at the Yale School of Management. I have also held positions as an Assistant Professor of Economics at INSEAD, a graduate business school located near Paris, France, a visiting Assistant Professor of Strategy at the University of Chicago Booth School of Business, and a Lecturer in Economics at the University of Chicago.
- (2) In the past, I have been retained to testify as an expert economist by both plaintiffs and defendants in litigation, and I have been qualified as an expert to provide opinions to the court based on econometric analyses. I have also been retained by both plaintiffs and defendants to lead teams of economists to conduct analyses and prepare expert reports in support of other testifying experts and to assess damages and liability in intellectual property, antitrust, breach of contract, fraud, and other business disputes. I have presented economic analyses, including game theoretical and econometric analyses, to the staffs and economists of the US Federal Trade Commission, several States Attorneys General and the Competition Bureau of Canada on multiple occasions on topics related to competition in a variety of industries.
- (3) In my capacity as a Senior Faculty Fellow at the Yale School of Management, I have taught MBA students in both core and advanced MBA strategy courses, lecturing on topics including techniques in game theory and the application of game theory to business problems. Throughout those courses, I employ examples from poker to illustrate various skills, techniques, and lessons that contribute to success in both business and poker. At INSEAD, I designed and taught a popular MBA elective strategy course based entirely on these game theory lessons. I have also taught game theory applications to PhD students in industrial organization courses at INSEAD, to undergraduates at the University of Chicago, and to business executives in graduate training programs. I have published scholarly work involving the application of game theoretical concepts to competitive situations.
- (4) I have also been trained in econometrics, the branch of mathematics and statistics involving the application of statistical techniques to economic data. I have written and published scholarly work employing econometric techniques to distinguish the impacts of individual choices from the effects of other confounding factors. My position as a consulting economist routinely involves work in econometrics.

DRAFT Report of Randal D. Heeb

- (5) I have been a successful non-professional poker player for more than 25 years, playing live and more recently online in both "cash games" and tournaments. In 1994, I reached the final table in a major Nevada poker tournament for the first time, playing Limit Hold'em. I have won or finished in the money in U.S. or International poker tournaments in games of Limit Hold'em, No Limit Hold'em, Pot Limit Omaha, and Omaha Hi/Lo. I have finished in the money in World Series of Poker events six times, including this year, and in 2002, when I won the World Series of Poker \$3,000 No Limit Hold'em event.